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6 || Attorneys for Plaintiff

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF CALIFORNIA

10 JENNIFER MAREK and ISABELLE DWIGHT
11 as individuals, on behalf of themselves, the general public and those similarly situated,

12 || Plaintiff,

14

15 MOLSON COORS BEVERAGE COMPANY
16 and MOLSON COORS BEVERAGE COMPANY USA LLC.

17 || Defendants.

CASE NO. 21-cv-07174-WHO

**FIRST AMENDED CLASS ACTION
COMPLAINT FOR VIOLATION OF
THE CALIFORNIA CONSUMERS LE-
GAL REMEDIES ACT; FALSE AD-
VERTISING; FRAUD, DECEIT,
AND/OR MISREPRESENTATION;
UNFAIR BUSINESS PRACTICES;
AND UNJUST ENRICHMENT**

JURY TRIAL DEMANDED

INTRODUCTION

1. Plaintiffs Jennifer Marek and Isabelle Dwight, by and through their counsel, brings this class action against Molson Coors Beverage Company and Molson Coors Beverage Company USA LLC (collectively, “Defendants” or “Molson Coors”) to seek redress for Defendants’ deceptive and unlawful practices in labeling and marketing its Vizzy Hard Seltzer.

2. Consumers are increasingly interested in getting health benefits from their food and drink. Consumers are attracted to “better for you” products that are healthier than other alternatives in food and beverage categories that are not typically healthy (or even unhealthy). To make healthy choices, consumers rely on food and drink product labels.

3. Intending to profit from consumers' increasing desire to consumer healthy food and drink, Defendants fortified their alcoholic beverage by sprinkling nutrients into a beverage that is lawfully required to disclose harmful health effects. 27 U.S.C. § 215. Of course, adding an insignificant amount of nutrients to an alcoholic beverage will do little to overcome the harmful effects of alcohol.

4. But Defendants did just this. They fortified their Vizzy products with an insignificant amount of Vitamin C, and then blanketed the labels and advertising with statements affirmatively promoting antioxidant Vitamin C from a “superfruit.” Defendants’ campaign is both misleading and dangerous to consumers. It is also unlawful, as Defendants’ labels ignore FDA and Congressional policies acknowledging such danger.

5. Accordingly, Defendants' manufacturing, labeling, and advertising of the Products as containing "Antioxidant Vitamin C from Acerola Superfruit" and the other representations detailed herein are unlawful, misleading, and designed to deceive consumers into purchasing Defendants' Products. Plaintiffs brings this action to stop Defendants' misleading practices.

PARTIES

6. Jennifer Marek (“Plaintiff”) is, and at all times alleged in this Class Action Complaint was, an individual and a resident of Menlo Park, California.

7. Isabelle Dwight (“Plaintiff”) is, and at all times alleged in this Class Action Complaint was, an individual and a resident of Los Angeles, California.

8. Defendant Molson Coors Beverage Company, is a corporation existing under the laws of the State of Delaware, having its principal place of business in Chicago, Illinois.

9. Defendant Molson Coors Beverage Company USA LLC (together with Molson Coors Beverage Company, “Defendants”), is a corporation existing under the laws of the State of Delaware, having its principal place of business in Chicago, Illinois.

JURISDICTION AND VENUE

10. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. § 1332(d)(2). The aggregate amount in controversy exceeds \$5,000,000, exclusive of interest and costs; and Plaintiff and at least one Defendant are citizens of different states.

11. The injuries, damages and/or harm upon which this action is based, occurred or arose out of activities engaged in by Defendants within, affecting, and emanating from, the State of California. Defendants regularly conduct and/or solicit business in, engage in other persistent courses of conduct in, and/or derive substantial revenue from products provided to persons in the State of California. Defendants have engaged, and continue to engage, in substantial and continuous business practices in the State of California.

12. Venue is proper in this District pursuant to 28 U.S.C. § 1391(b)(2) because a substantial part of the events or omissions giving rise to the claims occurred in the state of California, including within this District.

13. In accordance with California Civil Code Section 1780(d), Plaintiff Marek concurrently files herewith a declaration establishing that, at various times throughout the class period, she purchased Vizzy Hard Seltzer at a Target in Redwood City, California. (Plaintiff's declaration is attached hereto as Exhibit A.)

14. Plaintiffs accordingly allege that jurisdiction and venue are proper in this Court.

SUBSTANTIVE ALLEGATIONS

Defendants' Products

15. Defendants manufacture, distribute, market, advertise, and sell a variety of hard seltzers under the brand name “Vizzy.”

1 16. Hard seltzers are carbonated, alcoholic beverages, mainly derived from either a
 2 brewed sugar base or brewed malt base. They are often purchased and consumed because they are
 3 low calorie, low sugar, inexpensive alcoholic drinks.

4 17. Vizzy products predominately, uniformly, and consistently state on the principal
 5 display panel of the product labels that the products are made “with Antioxidant Vitamin C from
 6 acerola superfruit.” Vizzy hard seltzers come in a variety of flavors, including Blackberry Lemon,
 7 Watermelon Strawberry, Papaya Passionfruit, Raspberry Tangerine, Blueberry Pomegranate,
 8 Strawberry Kiwi, Black Cherry Lime, Pineapple Mango, Raspberry Lemonade, Strawberry Lem-
 9 onade, Peach Lemonade, and Watermelon Lemonade. These products, and any other Vizzy Hard
 10 Seltzer products that make a claim regarding antioxidant Vitamin C, will hereinafter be referred
 11 to as “Products.”

12 18. The representation that the Products contain and provide antioxidant vitamin C
 13 from acerola superfruit was uniformly communicated to Plaintiffs and every other person who
 14 purchased any of the Products in California and the United States. The same or substantially simi-
 15 lar product label has appeared on each respective product during the entirety of the Class Period
 16 in the general form of the following example:



1 19. The Products' website repeats the claims with statements such as: "Another hard
 2 seltzer? Yeah, but we've got antioxidant vitamin C."

3 20. Other advertisements brag that Vizzy is the "First hard seltzer made with antioxi-
 4 dant vitamin C from acerola superfruit." Television adds also boast, "Given the choice, why
 5 wouldn't you choose the one with antioxidants and vitamin C?"



16 21. In recent years, consumer demand for hard seltzers has exploded. In 2018, hard
 17 seltzer sales were a mere \$210 million and in 2019, sales sky rocketed to \$1.2 billion with no
 18 signs of slowing.

19 22. In order to distinguish Vizzy in the bullish market of hard seltzers, Defendants
 20 have fortified their product to distract from the severe harm that may occur from alcohol con-
 21 sumption. Seeking to cash in on the hard seltzer craze, Defendants have violated FDA policies
 22 and regulations and for the reasons described herein, its labels are misleading and deceptive.

1 Defendants' Products Are Harmful

2 23. Federal regulations require that Defendants' Products bear the following warning:
 3 "GOVERNMENT WARNING: (1) According to the Surgeon General, women should not drink
 4 alcoholic beverages during pregnancy because of the risk of birth defects. (2) Consumption of al-
 5 coholic beverages impairs your ability to drive a car or operate machinery, and **may cause health**
 6 **problems.**" 27 U.S.C. § 215 (emphasis added).

7 24. In enacting this requirement, Congress found that "the American public should be
 8 informed about the health hazards that may result from the consumption or abuse of alcoholic
 9 beverages."¹

10 25. The nutrient content of alcoholic beverages is usually negligible. Because they
 11 provide almost no nutrients, alcoholic beverages are considered "empty calories."²

12 26. Over the long-term, consuming excess alcohol can also impair the body's ability to
 13 digest and utilize nutrients.³

14 27. The United States Department of Agriculture's 2020-2025 Dietary Guidelines for
 15 Americans (DGA) encourage "[a]dults who choose to drink . . . to limit daily intakes . . . so as not
 16 to exceed daily calorie limits," and cautions that, in general, "drinking less is better for health
 17 than drinking more."⁴

18 28. Evidence indicates that, among those who drink, higher average alcohol consumption
 19 is associated with an increased risk of death from all causes compared with lower average alcohol
 20 consumption. Emerging evidence suggests that even drinking within the recommended limits may

23 21
 24 22
 25 23 ¹ ANTI-DRUG ABUSE ACT OF 1988, 1988 Enacted H.R. 5210, 100 Enacted H.R. 5210, 102
 26 24 Stat. 4181, 4518, 100 P.L. 690, 1988 Enacted H.R. 5210, 100 Enacted H.R. 5210
 27 25 ² Lieber CS. Relationships Between Nutrition, Alcohol Use, and Liver Disease, Relationships Be-
 28 26 tween Nutrition, Alcohol Use, and Liver Disease. National Institutes of Health. 2004.
 29 27 https://pubs.niaaa.nih.gov/publications/arh27-3/220-231.htm

30 28 ³ Lieber CS. Alcohol: its metabolism and interaction with nutrients. *Annu Rev Nutr.* 2000;20:395-
 31 29 430.

32 30 ⁴ U.S. Department of Agriculture and U.S. Department of Health and Human Services. Dietary
 33 31 Guidelines for Americans 2020-2025. 2020. p49. https://www.dietaryguidelines.gov/sites/de-
 34 32 fault/files/2020-12/Dietary_Guidelines_for_Americans_2020-2025.pdf

1 increase the overall risk of death from various causes, such as from several types of cancer and some
 2 forms of cardiovascular disease.⁵

3 29. According to the CDC, “Excessive alcohol use is responsible for more than 95,000
 4 deaths in the United States each year, or 261 deaths per day. These deaths shorten the lives of
 5 those who die by an average of almost 29 years, for a total of 2.8 million years of potential life
 6 lost. It is a leading cause of preventable death in the United States, and cost the nation \$249 bil-
 7 lion in 2010.”⁶

8 30. Worse, “[m]ore than half of alcohol-attributable deaths are due to health effects
 9 from drinking too much over time, such as various types of cancer, liver disease, and heart dis-
 10 ease.”⁷

11 **Defendants’ Products Do Not Provide Health Benefits**

12 31. Attempting to overcome the deleterious health impact of its Products, Defendants
 13 added Vitamin C to their Products and includes “with Antioxidant Vitamin C from Acerola Su-
 14 perfruit” on the label and in advertisements. However, Defendants’ addition of vitamin C to the
 15 Products provides only 20% of the Food and Drug Administration’s (“FDA”) Recommended
 16 Daily Intake (“RDI”) of vitamin C per 12 ounce can. See 21 C.F.R. § 101.9(c)(8). Current sci-
 17 entific research, however, does not indicate that vitamin C provides significant health benefits at
 18 this level.

19 32. Scientific research suggests that isolated antioxidants, such as the vitamin C added
 20 to Defendants’ Products, do not provide the same health benefits as antioxidants from a diet rich
 21 in fruits and vegetables. Clinical trials indicate that individual antioxidants taken alone do not ap-
 22 pear to have preventative effects.⁸

23
 24
 25
 5 Id.

26 6 Centers for Disease Control and Prevention, Alcohol and Public Health, <https://www.cdc.gov/al->
 27 cohol/features/excessive-alcohol-deaths.html (last accessed June 15, 2021).

7 Id.

28 8 See National Institutes of Health, Office of Dietary Supplements, Vitamin C Fact Sheet for Con-
 sumers, available at <https://ods.od.nih.gov/factsheets/list-all/#VitaminC>.

1 33. In this regard, the United States Department of Agriculture notes that

2 [a]n underlying premise of the Dietary Guidelines is that nutritional
3 needs should be met primarily from foods and beverages—specific-
4 ally, nutrient-dense foods and beverages. ... Nutrient-dense foods
5 and beverages provide vitamins, minerals, and other health-promoting
6 components...⁹

7 34. Moreover, consumers simply seeking to meet the RDI for vitamin C are also un-
8 likely to experience health benefits from Vizzy Hard Seltzer Products. The National Institutes of
9 Health confirms that vitamin C deficiency is rare, and the average American likely exceeds the
10 RDI for vitamin C.¹⁰ Because vitamin C is water soluble, the body does not store excess vitamin
11 C that a human consumes, meaning the excess vitamin C will likely pass through the body.

12 35. Even worse, alcohol consumption interferes with nutrient absorption, and even
13 where a body absorbs nutrients, alcohol prevents the body from using nutrients by altering the
14 transport, metabolism, and storage of nutrients.¹¹

15 36. Further, Defendants' use of the term "superfruit" on the Product labels further im-
16 plies that the Products are healthy. The term "superfruit" has become an industry term to denote
17 nutrient-dense fruits, synonymous with "healthy" and "nutritious." However, little evidence sup-
18 ports the claim that a dusting of powder provides benefits associated with consumption of a fresh
19 "superfruit."

20 37. In summary, Defendants' representations "with Vitamin C Antioxidant from Acer-
21 ola Superfruit" mislead reasonable consumers into believing that the antioxidant content of the
22 Products provides health benefits. The minimal amount of vitamin C in the Products will not pro-
23 vide consumers with the health benefits that Defendants' representations lead them to expect, and
24 even worse, the Product is actually dangerous to consumers' health.

25 _____
26 ⁹ United States Department of Agriculture, Dietary Guidelines for Americans, 2020-2025, Execu-
27 tive Summary, pgs. ix-x (available at <https://www.dietaryguidelines.gov/>).
28 ¹⁰ National Institutes of Health, Office of Dietary Supplements, Vitamin C Fact Sheet for Con-
sumers, available at <https://ods.od.nih.gov/factsheets/VitaminC-Consumer/> (accessed June 11,
2021).

29 ¹¹ Lieber, Charles S. "Alcohol and nutrition; an overview." *Alcohol Health & Research World*,
30 vol. 13, no. 3, 1989, p. 197+. *Gale Academic OneFile*,
31 link.gale.com/apps/doc/A8191860/AONE?u=anon~4ce0ada0&sid=google-
32 Scholar&xid=296d4991. Accessed 14 July 2021.

1 38. Defendants' use of the term "Antioxidant" and the other representations and im-
 2 ages detailed herein in the marketing, labeling, and advertising of the Products is thus nothing
 3 more than a marketing gimmick intended to deceive consumers into purchasing the Products. Ac-
 4 cordingly, Defendants' representations concerning the nutritional qualities, health qualities, and
 5 ingredients of the Products are misleading, deceptive, and unlawful.

6 **Federal and State Regulations**

7 39. The Federal Food, Drug, and Cosmetics Act (the "FDCA"), 21 U.S.C. § 343(a),
 8 provides that a food is misbranded if "its labeling is false or misleading in any particular."

9 40. The FDA has provided guidance that fortification of certain products, including
 10 carbonated beverages, is not appropriate. 21 C.F.R. § 104.20 (the "Fortification Policy").¹² The
 11 Fortification Policy states that "The random fortification of foods . . . could result in deceptive
 12 and misleading claims."

13 41. Specifically, under the Fortification Policy, the FDA "does not encourage indis-
 14 criminate addition of nutrients to foods, nor does it consider it appropriate to fortify . . . snack
 15 foods such as . . . carbonated beverages." *See* 21 C.F.R. § 104.20(a).

16 42. In a 2015 Q&A Guidance Document relating to the Fortification Policy, the FDA
 17 was unequivocal:

18 **B4. Is it appropriate to add vitamins and minerals to alcoholic beverages?**

19 No. Under our fortification policy, we do not consider it appropriate to add vitamins and minerals
 to alcoholic beverages.

20 43. The Fortification Policy defines "fortification" as "the addition of a vitamin, min-
 21 eral, or protein to a food." The use of dried acerola juice in Vizzy Hard Seltzer is fortification be-
 22 cause this ingredient is used to add Vitamin C.

23 44. The Fortification Policy is a guidance that is binding in certain circumstances.
 24 Where a food makes an implied nutrient content claim by using a term that suggests that a food
 25 helps consumers maintain healthy dietary practices in conjunction with an explicit statement

26
 27 ¹² Under the U.S. Internal Revenue Code "IRC" 27 CFR Part 7, a malt based hard seltzer is con-
 28 sidered a malt beverage which is subject to TTB Labeling and advertising regulations, while a
 sugar based hard seltzer is considered "beer" and is subject to FDA regulation. Vizzy Hard Selt-
 zer is derived from sugar. Therefore, Defendants' Products are subject to FDA regulations.

1 about a nutrient, the product must comply with the Fortification Policy. *See* 21 C.F.R. §
 2 101.65(d).

3 45. Identical federal and California laws regulate the content of labels on packaged
 4 food and drink. The requirements of the FDCA, and its labeling regulations, including those set
 5 forth in 21 C.F.R. §§ 101, 102, were adopted by the California legislature in the Sherman Food
 6 Drug & Cosmetic Law (the “Sherman Law”). California Health & Safety Code § 110100 (“All
 7 food labeling regulations and any amendments to those regulations adopted pursuant to the fed-
 8 eral act, in effect on January 1, 1993, or adopted on or after that date shall be the food labeling
 9 regulations of this state.”). The federal laws and regulations discussed below are applicable na-
 10 tionwide to all sales of packaged food products. Additionally, no state imposes different require-
 11 ments on the labeling of packaged food for sale in the United States.

12 46. Under the FDCA, the term misleading is a term of art that covers labels that are
 13 technically true, but are likely to deceive consumers. Under the FDCA, if any single representa-
 14 tion on the labeling is false or misleading, the entire food is misbranded, and no other statement in
 15 the labeling can cure a misleading statement.

16 47. Further, in addition to its blanket adoption of federal labeling requirements, Cali-
 17 fornia has also enacted a number of laws and regulations that adopt and incorporate specific enu-
 18 merated federal food laws and regulations. *See* California Health & Safety Code § 110660
 19 (misbranded if label is false and misleading).

20 48. Under California law, a food product that is “misbranded” cannot legally be manu-
 21 factured, advertised, distributed, sold, or possessed. Misbranded products have no economic value
 22 and are legally worthless.

23 **Defendants’ Marketing and Labeling of its Products Violates State and Federal Food Label-
 24 ing Laws**

25 49. As the FDA recognizes in its Fortification Policy, the fortification of unhealthy
 26 foods such as alcoholic and carbonated beverages is misleading and deceptive to consumers. The
 27 deception is particularly acute where compared to other hard seltzer products in the marketplace

1 that do not contain unlawful advertising and fortification. Thus, the Products are misleading and
 2 therefore misbranded.

3 50. Further, the Products are required to comply with the Fortification Policy because
 4 the Products make nutritional claims.

5 51. The term “superfruit” suggests that the Products, because of their nutrient content,
 6 may help consumers maintain healthy dietary practices. The Products use the term “superfruit” in
 7 conjunction with the statement “with Antioxidant Vitamin C,” which is an explicit statement
 8 about a nutrient. *See* 21 C.F.R. 101.65(d). Therefore, the Products make a nutritional claim.

9 52. Because the Products make a nutritional claim, they must comply with the Fortifi-
 10 cation Policy. 21 C.F.R. 101.65(d)(2)(iv).

11 53. The Products violate the Fortification Policy because they are carbonated bever-
 12 ages that are fortified with the nutrient Vitamin C. The Products are therefore unlawfully forti-
 13 fied, and the Product labels contain prohibited nutritional claims. Thus, the Products are
 14 misbranded.

15 54. Defendants’ Products are unlawful, misbranded, and violate the Sherman Law,
 16 California Health & Safety Code § 110660, et seq., because the Products’ labels state the Prod-
 17 ucts are made “with Antioxidant Vitamin C from Acerola Superfruit,” implying the Products are a
 18 healthful source of nutrients, even though FDA guidance states that fortification of alcoholic, car-
 19 bonated beverages is not appropriate and would result in misleading consumers.

20 55. Defendants’ marketing, advertising, and sale of the Products violates the false ad-
 21 vertising provisions of the Sherman Law (California Health & Safety Code § 110390, et. Seq.),
 22 including but not limited to:

- 23 a. Section 110390, which makes it unlawful to disseminate false or misleading food
 24 advertisements that include statements on products and product packaging or
 25 labeling or any other medium used to directly or indirectly induce the purchase of a
 26 food product;
- 27 b. Section 110395, which makes it unlawful to manufacture, sell, deliver, hold or offer
 28 to sell any falsely or misleadingly advertised food; and

- c. Sections 110398 and 110400, which make it unlawful to advertise misbranded food or to deliver or proffer for delivery any food that has been falsely or misleadingly advertised.

4 56. Defendants' marketing, advertising, and sale of the Products violates the
5 misbranding provisions of the Sherman Law (California Health & Safety Code § 110660, *et*.
6 *seq.*), including but not limited to:

- a. Section 110665 (a food is misbranded if its labeling does not conform with the requirements for nutrition labeling as set forth in 21 U.S.C. Sec. 343(q));
- b. Section 110705 (a food is misbranded if words, statements and other information required by the Sherman Law to appear on food labeling is either missing or not sufficiently conspicuous);
- c. Section 110760, which makes it unlawful for any person to manufacture, sell, deliver, hold, or offer for sale any food that is misbranded;
- d. Section 110765, which makes it unlawful for any person to misbrand any food; and
- e. Section 110770, which makes it unlawful for any person to receive in commerce any food that is misbranded or to deliver or proffer for delivery any such food.

17 57. Defendants have violated 21 U.S.C. § 343(a), and the standards set by FDA
18 regulations, including but not limited to 21 C.F.R. § 101.65(d), which have been incorporated by
19 reference in the Sherman Law, by fortifying their products and misleading consumers with claims
20 of healthfulness.

21 58. A reasonable consumer would expect that the Products are a healthful source of
22 nutrients and that the labels would not be contrary to the policies or regulations of the State of
23 California and/or the FDA.

24 59. Consumers lack the meaningful ability to test or independently ascertain the truth-
25 fulness of Defendants' food labeling claims, especially at the point of sale. Consumers would not
26 know that the Products are unlawfully fortified and unlawfully labeled. Its discovery requires in-
27 vestigation well beyond the grocery store aisle and knowledge of FDA regulations and food
28 chemistry beyond that of the average consumer. An average consumer does not have the

1 specialized knowledge necessary to ascertain that the deleterious effects of alcohol overtime will
 2 not be overcome by the fortification of the Products with scant amounts of Vitamin C or that the
 3 alcohol in the beverages will interfere with the metabolism of the vitamin C. Therefore, consumers
 4 had no reason to investigate whether the Products actually are a healthful source of nutrients
 5 as the labels claim. Thus, reasonable consumers relied on Defendants' representations regarding
 6 the nature of the Products.

7 60. Defendants intend and know that consumers will and do rely upon food labeling
 8 statements in making their purchasing decisions. Label claims and other forms of advertising and
 9 marketing drive product sales, particularly if placed prominently on the front of product packaging,
 10 as Defendants have done with the claim that its Products are a healthful source of nutrients.

11 **Defendants Intend to Continue to Market their Products as Containing Antioxidant**
 12 **Vitamin C from Acerola Superfruit**

13 61. Because consumers pay a price premium for products that contain antioxidants and
 14 are perceived as providing health benefits, by fortifying their Products and labeling its Products as
 15 containing nutrients and superfruit, Defendants are able to both increase its sales and retain more
 16 profits.

17 62. Defendants engaged in the practices complained of herein to further its private in-
 18 terests of: (i) increasing sales of its Products while decreasing the sales of competitors that do not
 19 unlawfully fortify and label their products, and/or (ii) commanding a higher price for its Products
 20 because consumers will pay more for these Products due to consumers' demand for healthful
 21 products.

22 63. The market for hard seltzer products is continuing to grow and expand, and be-
 23 cause Defendants know consumers rely on representations about the antioxidant vitamin C con-
 24 tent from superfruit in their Products, Defendants have an incentive to continue to make such
 25 false and misleading representations. In addition, other trends suggest that Defendants have no
 26 incentive to change their labeling practices.

27

28

64. For example, one market analysis revealed that the market for hard seltzers is expected to grow at a 16% compound annual growth rate through 2027.¹³

65. To capitalize on the growing market, since introducing its Products in 2020, Defendants have expanded their product line to a new “lemonade hard seltzer” flavor line in April 2021. Vizzy’s senior director of above premium flavor has stated “All of the hard seltzers out there are basically the same: the same white packaging, the same flavors, same calories and carbs. Vizzy counters that sea of sameness with a unique ingredient - antioxidant vitamin C from acerola superfruit. The campaign brings that to the forefront to make a drinker’s choice really simple.”¹⁴

66. Defendants continue to launch new flavors to diversify their portfolio to maintain their competitive edge, making it likely that Defendants will continue to unlawfully fortify their Products and misleadingly advertise their Products to perpetuate the misrepresentations regarding the healthfulness of their Products.

PLAINTIFFS' EXPERIENCE

Jennifer Marek

67. Plaintiff Marek purchased variety 12 packs of Vizzy Hard Seltzer from Target, including from Target in Redwood City, California on June 3, 2021.

68. Plaintiff Marek made each of her purchases after reading and relying on Defendants' product label that advertised "With Antioxidant Vitamin C from Acerola Superfruit." She was attracted to the Products because, when given a choice, she preferred to receive health benefits while drinking a hard seltzer.

69. At the time of each of her purchases of the Products, Plaintiff Marek did not know that the Products were unlawfully fortified and labeled and would not provide nutritious benefits. As a result of Defendants' misrepresentations and omissions, the Products have no, or, at a minimum, a much lower value to Plaintiff.

¹³ <https://www.toptal.com/finance/market-research-analysts/hard-seltzer-industry#:~:text=The%20global%20hard%20seltzer%20market,US%2C%20Canada%2C%20and%20Australia>.

¹⁴ <https://www.marketscreener.com/quote/stock/MOLSON-COORS-BEVERAGE-COM-14548/news/Molson-Coors-Beveragenbsp;-Vizzy-Hard-Seltzer-launches-ad-campaign-taking-aim-at-'sea-of-sam'-30971771/>

1 70. Plaintiff Marek not only purchased the Products because of the unlawful labeling,
 2 but she also paid more money for the Products than she would have paid for other or a similar al-
 3 coholic beverage product that was not unlawfully fortified and labeled with misleading nutrient
 4 content claims.

5 71. Had Defendants not misrepresented (by omission and commission) the true nature
 6 of the Products, Plaintiff would not have purchased them or, at a very minimum, she would have
 7 paid less for the Products.

8 72. Plaintiff Marek continues to desire to purchase alcohol products, including those
 9 marketed and sold by Defendants. If Defendants' Products were reformulated to remove the nutri-
 10 ents, and labeled without the unlawful nutrient claims, Plaintiff would likely purchase Defend-
 11 ants' Products again in the future. Plaintiff regularly visits stores where Defendants' Products and
 12 other hard seltzers are sold.

13 **Isabelle Dwight**

14 73. Plaintiff, Isabelle Dwight, purchased variety 12 packs of Vizzy Hard Seltzer from
 15 7-Eleven and Ralph's, including from Los Angeles, California between May 1, 2020 and Septem-
 16 ber 30, 2020.

17 74. Plaintiff Dwight made each of her purchases after reading and relying on Defend-
 18 ants' product label that advertised "With Antioxidant Vitamin C from Acerola Superfruit." She
 19 was attracted to the Products because, when given a choice, she preferred to receive health bene-
 20 fits while drinking a hard seltzer.

21 75. At the time of each of her purchases of the Products, Plaintiff Dwight did not
 22 know that the Products were unlawfully fortified and labeled and would not provide nutritious
 23 benefits. As a result of Defendants' misrepresentations and omissions, the Products have no, or, at
 24 a minimum, a much lower value to Plaintiff.

25 76. Plaintiff Dwight not only purchased the Products because of the unlawful labeling,
 26 but she also paid more money for the Products than she would have paid for other or a similar al-
 27 coholic beverage product that was not unlawfully fortified and labeled with misleading nutrient
 28 content claims.

77. Had Defendants not misrepresented (by omission and commission) the true nature of the Products, Plaintiff would not have purchased them or, at a very minimum, she would have paid less for the Products.

78. Plaintiff Dwight continues to desire to purchase alcohol products, including those marketed and sold by Defendants. If Defendants' Products were reformulated to remove the nutrients, and labeled without the unlawful nutrient claims, Plaintiff Dwight would likely purchase Defendants' Products again in the future. Plaintiff Dwight regularly visits stores where Defendants' Products and other hard seltzers are sold.

79. Plaintiffs and members of the Class have been economically damaged by their purchase of the Products because the advertising for the Products was and is untrue and/or misleading under California law and the products are misbranded; therefore, the Products are worth less than what Plaintiffs and members of the Class paid for them and/or Plaintiffs and members of the Class did not receive what they reasonably intended to receive.

CLASS ALLEGATIONS

80. Plaintiffs bring this class action lawsuit on behalf of themselves and a proposed class of similarly situated persons, pursuant to Rule 23(b)(2) and (b)(3) of the Federal Rules of Civil Procedure. Plaintiffs seek to represent the following groups of similarly situated persons, defined as follows:

All persons in the State of California who purchased the Products between September 16, 2017 and the present.

81. This action has been brought and may properly be maintained as a class action against Defendants because there is a well-defined community of interest in the litigation and the proposed class is easily ascertainable.

82. Numerosity: Plaintiffs do not know the exact size the Class, but they estimate that it is composed of more than 100 persons. The persons in the Class are so numerous that the joinder of all such persons is impracticable and the disposition of their claims in a class action rather than in individual actions will benefit the parties and the courts.

83. Common Questions Predominate: This action involves common questions of law

1 and fact to the potential classes because each class member's claim derives from the deceptive,
2 unlawful and/or unfair statements and omissions that led consumers to believe that the Products
3 provide health benefits as represented on the Product labels. The common questions of law and
4 fact predominate over individual questions, as proof of a common or single set of facts will
5 establish the right of each member of the Class to recover. The questions of law and fact common
6 to the Class are:

- 7 a. Whether the marketing, advertising, packaging, labeling, and other promotional
8 materials for the Products are deceptive and/or unlawful;
- 9 b. Whether Defendants' actions violate Federal and California laws invoked herein;
- 10 c. Whether the fortification of the Product is unlawful;
- 11 d. Whether labeling the Products with nutrient content claims causes the Products to
12 command a price premium in the market as compared with similar products that do
13 not make such misrepresentations;
- 14 e. Whether Defendants' advertising and marketing regarding the Products sold to the
15 class members was likely to deceive reasonable consumers;
- 16 f. Whether representations regarding the antioxidant vitamin C in the Products are
17 material to a reasonable consumer;
- 18 g. Whether representations regarding the use of a superfruit in the Products are
19 material to a reasonable consumer;
- 20 h. Whether Defendants engaged in the behavior knowingly, recklessly, or
21 negligently;
- 22 i. The amount of profits and revenues earned by Defendants as a result of the
23 conduct;
- 24 j. Whether class members are entitled to restitution, injunctive and other equitable
25 relief and, if so, what is the nature (and amount) of such relief; and
- 26 k. Whether class members are entitled to payment of actual, incidental,
27 consequential, exemplary and/or statutory damages plus interest thereon, and if so,
28 what is the nature of such relief.

1 84. Typicality: Plaintiffs' claims are typical of the claims of the other members of the
 2 Class because, among other things, all such claims arise out of the same wrongful course of
 3 conduct engaged in by Defendants in violation of law as complained of herein. Further, the
 4 damages of each member of the Class were caused directly by Defendants' wrongful conduct in
 5 violation of the law as alleged herein.

6 85. Adequacy of Representation: Plaintiffs will fairly and adequately protect the
 7 interests of all class members because it is in their best interests to prosecute the claims alleged
 8 herein to obtain full compensation due to them for the unfair and illegal conduct of which they
 9 complains. Plaintiffs also have no interests that are in conflict with, or antagonistic to, the
 10 interests of class members. Plaintiffs have retained highly competent and experienced class action
 11 attorneys to represent his interests and that of the class. By prevailing on their own claims,
 12 Plaintiffs will establish Defendants' liability to all class members. Plaintiffs and their counsel
 13 have the necessary financial resources to adequately and vigorously litigate this class action, and
 14 Plaintiffs and counsel are aware of their fiduciary responsibilities to the class members and are
 15 determined to diligently discharge those duties by vigorously seeking the maximum possible
 16 recovery for class members.

17 86. Superiority: There is no plain, speedy, or adequate remedy other than by
 18 maintenance of this class action. The prosecution of individual remedies by members of the
 19 classes will tend to establish inconsistent standards of conduct for Defendants and result in the
 20 impairment of class members' rights and the disposition of their interests through actions to
 21 which they were not parties. Class action treatment will permit a large number of similarly
 22 situated persons to prosecute their common claims in a single forum simultaneously, efficiently,
 23 and without the unnecessary duplication of effort and expense that numerous individual actions
 24 would engender. Furthermore, as the damages suffered by each individual member of the classes
 25 may be relatively small, the expenses and burden of individual litigation would make it difficult
 26 or impossible for individual members of the class to redress the wrongs done to them, while an
 27 important public interest will be served by addressing the matter as a class action.

28 87. Plaintiffs are unaware of any difficulties that are likely to be encountered in the

1 management of this action that would preclude its maintenance as a class action.

2 **CAUSES OF ACTION**

3 Plaintiffs do not plead, and hereby disclaims, causes of action under the FDCA and
 4 regulations promulgated thereunder by the FDA. Plaintiffs rely on the FDCA and FDA
 5 regulations only to the extent such laws and regulations have been separately enacted as state law
 6 or regulation or provide a predicate basis of liability under the state and common laws cited in the
 7 following causes of action.

8 **PLAINTIFFS' FIRST CAUSE OF ACTION**

9 **(Violation of the Consumers Legal Remedies Act (the “CLRA”), California Civil Code §
 1750, *et seq.*)**

10 **On Behalf of Plaintiffs and the Class**

11 88. Plaintiffs reallege and incorporate the paragraphs of this Class Action Complaint
 12 as if set forth herein.

13 89. Defendants' actions, representations and conduct have violated, and continue to
 14 violate the CLRA, because they extend to transactions that are intended to result, or which have
 15 resulted, in the sale or lease of goods or services to consumers.

16 90. Plaintiffs and other class members are “consumers” as that term is defined by the
 17 CLRA in California Civil Code § 1761(d).

18 91. The Products that Plaintiffs (and other similarly situated class members) purchased
 19 from Defendants were “goods” within the meaning of California Civil Code § 1761(a).

20 92. Defendants' acts and practices, set forth in this Class Action Complaint, led
 21 customers to falsely believe that the Products provided health benefits as claimed on the product
 22 package. By engaging in the actions, representations and conduct set forth in this Class Action
 23 Complaint, Defendants have violated, and continues to violate, § 1770(a)(2), § 1770(a)(5),
 24 § 1770(a)(7), and § 1770(a)(8), of the CLRA. In violation of California Civil Code §1770(a)(2),
 25 Defendants' acts and practices constitute improper representations regarding the source,
 26 sponsorship, approval, or certification of the goods they sold. In violation of California Civil
 27 Code §1770(a)(5), Defendants' acts and practices constitute improper representations that the
 28 goods they sell have sponsorship, approval, characteristics, ingredients, uses, benefits, or

1 quantities, which they do not have. In violation of California Civil Code §1770(a)(7), Defendants'
2 acts and practices constitute improper representations that the goods it sells are of a particular
3 standard, quality, or grade, when they are of another. In violation of California Civil Code
4 §1770(a)(8), Defendants have disparaged the goods, services, or business of another by false or
5 misleading representation of fact. Finally, regarding California Civil Code §1770(a)(8),
6 Defendants falsely or deceptively markets and advertises that, unlike other alcoholic beverage
7 product manufacturers, it sells Products that contain antioxidant vitamin C.

8 93. Plaintiffs request that this Court enjoin Defendants from continuing to employ the
9 unlawful methods, acts and practices alleged herein pursuant to California Civil Code
10 § 1780(a)(2). If Defendants are not restrained from engaging in these types of practices in the
11 future, Plaintiffs and the other members of the Class will continue to suffer harm. Plaintiffs and
12 those similarly situated have no adequate remedy at law to stop Defendants continuing practices.

13 94. **CIVIL CODE § 1782 NOTICE.** Plaintiffs notices and demands that within thirty
14 (30) days from that date of the filing of this Complaint, Defendants correct, repair, replace or oth-
15 erwise rectify the unlawful, unfair, false and or deceptive practices complained of herein.

16 95. Should the violations herein alleged not be corrected or rectified as required by
17 Civil Code § 1782 within 30 days with respect to all Class Members, Plaintiffs will seek to amend
18 this Class Action Complaint to seek, on behalf of each Class Member, actual damages of at least
19 \$1,000, punitive damages, an award of \$5,000 for each Class Member who is a disabled person or
20 senior citizen, and restitution of any ill-gotten gains due to Defendants' acts and practices.

21 96. Plaintiffs also requests that this Court award their costs and reasonable attorneys'
22 fees pursuant to California Civil Code § 1780(d).

PLAINTIFFS' SECOND CAUSE OF ACTION
(False Advertising, Business and Professions Code § 17500, *et seq.* ("FAL"))
On Behalf of Plaintiffs and the Class

25 97. Plaintiffs reallege and incorporate by reference the paragraphs of this Class Action
26 Complaint as if set forth herein.

28 98. Beginning at an exact date unknown to Plaintiffs, but within three (3) years
preceding the filing of the Class Action Complaint, Defendants made deceptive and/or misleading

1 statements in connection with the advertising and marketing of the Products.

2 99. Defendants made representations and statements (by omission and commission)
 3 that led reasonable customers to believe that alcoholic beverages could be healthful sources of
 4 nutrients.

5 100. Plaintiffs and those similarly situated relied to their detriment on Defendants'
 6 false, misleading and deceptive advertising and marketing practices, including each of the
 7 misrepresentations and omissions set forth above. Had Plaintiffs and those similarly situated been
 8 adequately informed and not intentionally deceived by Defendants, they would have acted
 9 differently by, without limitation, refraining from purchasing Defendants' Products or paying less
 10 for them.

11 101. Defendants' acts and omissions are likely to deceive the general public.

12 102. Defendants engaged in these false, misleading and deceptive advertising and
 13 marketing practices to increase their profits. Accordingly, Defendants have engaged in false
 14 advertising, as defined and prohibited by section 17500, *et seq.* of the California Business and
 15 Professions Code.

16 103. The aforementioned practices, which Defendants used, and continues to use, to its
 17 significant financial gain, also constitute unlawful competition and provide an unlawful
 18 advantage over Defendants' competitors as well as injury to the general public.

19 104. As a direct and proximate result of such actions, Plaintiffs and the other class
 20 members have suffered, and continue to suffer, injury in fact and have lost money and/or property
 21 as a result of such false, deceptive and misleading advertising in an amount which will be proven
 22 at trial, but which is in excess of the jurisdictional minimum of this Court.

23 105. Plaintiffs seek, on behalf of themselves and those similarly situated, full restitution
 24 of monies, as necessary and according to proof, to restore any and all monies acquired by
 25 Defendants from Plaintiffs, the general public, or those similarly situated by means of the false,
 26 misleading and deceptive advertising and marketing practices complained of herein, plus interest
 27 thereon. Plaintiffs and those similarly situated lack any adequate remedy at law to obtain this
 28 restitution.

106. Plaintiffs seek, on behalf of themselves and those similarly situated, a declaration that the above-described practices constitute false, misleading and deceptive advertising.

3 107. Plaintiffs seek, on behalf of themselves and those similarly situated, an injunction
4 to prohibit Defendants from continuing to engage in the false, misleading and deceptive
5 advertising and marketing practices complained of herein. Such misconduct by Defendants,
6 unless and until enjoined and restrained by order of this Court, will continue to cause injury in
7 fact to the general public and the loss of money and property in that Defendants will continue to
8 violate the laws of California, unless specifically ordered to comply with the same. This
9 expectation of future violations will require current and future consumers to repeatedly and
10 continuously seek legal redress in order to recover monies paid to Defendants to which they are
11 not entitled. Plaintiff, those similarly situated and/or other consumers nationwide have no other
12 adequate remedy at law to ensure future compliance with the California Business and Professions
13 Code alleged to have been violated herein.

PLAINTIFFS' THIRD CAUSE OF ACTION
(Common Law Fraud, Deceit and/or Misrepresentation)
On Behalf of Plaintiffs and the Class

16 108. Plaintiffs reallege and incorporate by reference the paragraphs of this Class Action
17 Complaint as if set forth herein.

18 109. Defendants have fraudulently and deceptively informed Plaintiffs that the Products
19 are healthful sources of nutrients.

20 110. These misrepresentations and omissions were known exclusively to, and actively
21 concealed by, Defendants, not reasonably known to Plaintiffs, and material at the time they were
22 made. Defendants knew or should have known the composition of the Products, and knew or
23 should have known that the fortifying the Products is disapproved by the FDA, and when done in
24 conjunction with health claims is prohibited by the FDA, and in either instance results in
25 misleading consumers. Defendants' misrepresentations and omissions concerned material facts
26 that were essential to the analysis undertaken by Plaintiffs as to whether to purchase Defendants'
27 Products. In misleading Plaintiffs and not so informing Plaintiffs, Defendants breached their duty
28 to them. Defendants also gained financially from, and as a result of, their breach.

1 111. Plaintiffs and those similarly situated relied to their detriment on Defendants'
2 misrepresentations and fraudulent omissions. Had Plaintiffs and those similarly situated been
3 adequately informed and not intentionally deceived by Defendants, they would have acted
4 differently by, without limitation: (i) declining to purchase the Products, (ii) purchasing less of
5 them, or (iii) paying less for the Products.

6 112. By and through such fraud, deceit, misrepresentations and/or omissions,
7 Defendants intended to induce Plaintiffs and those similarly situated to alter their position to their
8 detriment. Specifically, Defendants fraudulently and deceptively induced Plaintiffs and those
9 similarly situated to, without limitation, purchase the Products.

10 113. Plaintiffs and those similarly situated justifiably and reasonably relied on
11 Defendants' misrepresentations and omissions, and, accordingly, were damaged by Defendants.

12 114. As a direct and proximate result of Defendants' misrepresentations and/or
13 omissions, Plaintiffs and those similarly situated have suffered damages, including, without
14 limitation, the amount they paid for the Products.

15 115. Defendants' conduct as described herein was wilful and malicious and was
16 designed to maximize Defendants' profits even though Defendants knew that it would cause loss
17 and harm to Plaintiffs and those similarly situated.

PLAINTIFFS' FOURTH CAUSE OF ACTION
(Unlawful, unfair, and fraudulent trade practices violation of Business and Professions Code § 17200, *et seq.*)
On Behalf of Plaintiffs and the Class

21 116. Plaintiffs reallege and incorporate by reference the paragraphs of this Class Action
22 Complaint as if set forth herein.
23

23 117. Within four (4) years preceding the filing of this lawsuit, and at all times
24 mentioned herein, Defendants have engaged, and continues to engage, in unlawful, unfair, and
25 fraudulent trade practices in California by engaging in the unlawful, unfair, and fraudulent
business practices outlined in this complaint.

27 118. In particular, Defendants have engaged, and continues to engage, in unlawful
28 practices by, without limitation, violating the following state and federal laws: (i) the CLRA as
29

1 described herein; (ii) the FAL as described herein; (iii) the advertising provisions of the Sherman
 2 Law (Article 3), including without limitation, California Health & Safety Code §§ 110390,
 3 110395, 110398 and 110400; (iv) the misbranded food provisions of the Sherman Law (Article
 4 6), including without limitation, California Health & Safety Code §§ 110660, 110665, 110705,
 5 110760, 110765, and 110770; and (v) and federal laws regulating the advertising and branding of
 6 food in 21 U.S.C. § 343(a), *et seq.* and FDA regulations, including but not limited to 21 C.F.R.
 7 104.20, and 21 C.F.R. 101.65(d), which are incorporated into the Sherman Law (California
 8 Health & Safety Code §§ 110100(a), 110380, and 110505).

9 119. In particular, Defendants have engaged, and continues to engage, in unfair and
 10 fraudulent practices by, without limitation, the following: (i) misrepresenting that the Products are
 11 healthful sources of nutrients; and (ii) fortifying its alcoholic, carbonated beverages in violation
 12 of FDA guidance and regulations.

13 120. Plaintiffs and those similarly situated relied to their detriment on Defendants
 14 unlawful, unfair, and fraudulent business practices. Had Plaintiffs and those similarly situated
 15 been adequately informed and not deceived by Defendants, they would have acted differently by,
 16 without limitation: (i) declining to purchase the Products, (ii) purchasing less of the Products, or
 17 (iii) paying less for the Products.

18 121. Defendants' acts and omissions are likely to deceive the general public.

19 122. Defendants engaged in these deceptive and unlawful practices to increase its
 20 profits. Accordingly, Defendants have engaged in unlawful trade practices, as defined and
 21 prohibited by section 17200, *et seq.* of the California Business and Professions Code.

22 123. The aforementioned practices, which Defendants have used to their significant
 23 financial gain, also constitute unlawful competition and provide an unlawful advantage over
 24 Defendants' competitors as well as injury to the general public.

25 124. As a direct and proximate result of such actions, Plaintiffs and the other class
 26 members, have suffered and continue to suffer injury in fact and have lost money and/or property
 27 as a result of such deceptive and/or unlawful trade practices and unfair competition in an amount
 28 which will be proven at trial, but which is in excess of the jurisdictional minimum of this Court.

1 Among other things, Plaintiffs and the class members lost the amount they paid for the Products.

2 125. As a direct and proximate result of such actions, Defendants have enjoyed, and
 3 continues to enjoy, significant financial gain in an amount which will be proven at trial, but which
 4 is in excess of the jurisdictional minimum of this Court.

5 126. Plaintiffs seek, on behalf of themselves and those similarly situated, full restitution
 6 of monies, as necessary and according to proof, to restore any and all monies acquired by
 7 Defendants from Plaintiffs, the general public, or those similarly situated by means of the
 8 deceptive and/or unlawful trade practices complained of herein, plus interest thereon. Plaintiffs
 9 and those similarly situated lack any adequate remedy at law to obtain this restitution.

10 127. Plaintiffs seek, on behalf of those similarly situated, a declaration that the above-
 11 described trade practices are fraudulent, unfair, and/or unlawful.

12 128. Plaintiffs seek, on behalf of those similarly situated, an injunction to prohibit
 13 Defendants from continuing to engage in the deceptive and/or unlawful trade practices
 14 complained of herein. Such misconduct by Defendants, unless and until enjoined and restrained
 15 by order of this Court, will continue to cause injury in fact to the general public and the loss of
 16 money and property in that Defendants will continue to violate the laws of California, unless
 17 specifically ordered to comply with the same. This expectation of future violations will require
 18 current and future consumers to repeatedly and continuously seek legal redress in order to recover
 19 monies paid to Defendants to which they were not entitled. Plaintiff, those similarly situated
 20 and/or other consumers nationwide have no other adequate remedy at law to ensure future
 21 compliance with the California Business and Professions Code alleged to have been violated
 22 herein.

23

PLAINTIFFS' FIFTH CAUSE OF ACTION
(Unjust Enrichment)
On Behalf of Plaintiffs and the Class

24 129. Plaintiffs reallege and incorporate by reference all paragraphs alleged herein.

25 130. Plaintiffs and members of the Class members conferred a benefit on the
 26 Defendants by purchasing the Products

1 131. Defendants have been unjustly enriched in retaining the revenues from Plaintiffs'
2 and Class Members' purchases of the Products, which retention is unjust and inequitable, because
3 Defendants falsely represented that the Products are healthful sources of nutrients when, in fact,
4 the Products are not healthful and FDA guidelines provide that carbonated and alcoholic
5 beverages should not be fortified with nutrients. This harmed Plaintiffs and members of the class
6 because they paid a price premium as a result.

7 132. Because Defendants' retention of the non-gratuitous benefit conferred on it by
8 Plaintiffs and Class members is unjust and inequitable, Defendants must pay restitution to
9 Plaintiffs and the Class members for its unjust enrichment, as ordered by the Court. Plaintiffs and
10 those similarly situated have no adequate remedy at law to obtain this restitution.

11 133. Plaintiffs, therefore, seek an order requiring Defendants to make restitution to his
12 and other members of the Class.

PRAYER FOR RELIEF

14 WHEREFORE, Plaintiffs, on behalf of themselves and those similarly situated,
15 respectfully request that the Court enter judgement against Defendants as follows:

18 B. An order temporarily and permanently enjoining Defendants from
19 continuing the unlawful, deceptive, fraudulent, and unfair business practices alleged in t
20 plaint;

21 C. An award of compensatory damages in an amount to be determined at trial, except
22 as to those causes of action where compensatory damages are not available at law;

23 D. An award of statutory damages in an amount to be determined at trial, except as to
24 those causes of action where statutory damages are not available at law;

25 E. An award of punitive damages in an amount to be determined at trial, except as to
26 those causes of action where punitive damages are not available at law;

27 F. An award of treble damages, except as to those causes of action where treble
28 damages are not available at law;

G. An award of restitution in an amount to be determined at trial, except as to those causes of action where restitution is not available at law;

H. An order requiring Defendants to pay both pre- and post-judgment interest on any amounts awarded;

I. For reasonable attorneys' fees and the costs of suit incurred; and

J. For such further relief as this Court may deem just and proper.

JURY TRIAL DEMANDED

Plaintiffs hereby demand a trial by jury.

Dated: October 8, 2021

GUTRIDE SAFIER LLP

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